

elements. And the fact that CLECs that seek to utilize such competitive interoffice transport services necessarily would already be collocated in the incumbent LEC's central office establishes that such services are not necessary for interconnection or access to unbundled network elements under section 251(c)(6).

In addition, as with dark fiber, in order to provide competitive interoffice transport services to collocated CLECs in the incumbent LEC's central office, a provider of such services would have to be able to cross-connect its facilities to those of collocated CLECs.²² But, as previously noted, the D.C. Circuit has already concluded that a cross-connection requirement cannot be reconciled with the plain language of section 251(c)(6). As such, incumbent LECs cannot be required to provide collocation for the facilities of alternative interoffice transport service providers pursuant to section 251(c)(6).

2. Cross-Connects

In the *NPRM*, the Commission solicits comment on "whether section 251(c)(6) encompasses cross-connects between collocators." *NPRM* ¶ 88. In particular, it asks whether it may "permissibly interpret" section 251(c)(6) to require incumbent LECs to permit the interconnection of two collocators' equipment or networks, rather than just the interconnection of a collocator's equipment or network to the incumbent LEC's network. *Id.* ¶¶ 88-89. The Commission further queries whether differences in the relative costs and quality of direct CLEC cross-connections at the incumbent LEC's premises, indirect connections at those premises, and

²² Again, as with dark fiber, a collocated CLEC that wishes to purchase interoffice transport services from an alternative provider of such services could always connect to such providers facilities outside the incumbent LEC's central office. The fact that it might be more costly to do so is irrelevant. *See GTE*, 205 F.3d at 423 ("The FCC cannot reasonably blind itself to statutory terms in the name of efficiency. *Chevron* deference does not bow to such unbridled agency action.").

direct or indirect connections outside those premises, would render any particular method of CLEC interconnection “necessary” within the meaning of section 251(c)(6). *Id.* ¶ 90. As the D.C. Circuit’s opinion makes clear, the answer to each of these questions is no. As discussed below, the plain language of section 251(c)(6) obligates an incumbent LEC to provide collocation only as necessary to connect a requesting carrier to the incumbent’s network. And neither section 251(a)(1), nor section 251(c)(2), nor section 251(c)(3), provides any authority for imposing collocation obligations on incumbent LECs. *See id.* ¶ 89 (asking whether an incumbent LEC may be required to provide cross-connects between two collocators pursuant to any other statutory provision, such as sections 251(a)(1), 251(c)(2), and 251(c)(3)).

In its opinion vacating the Commission’s collocation standard, the D.C. Circuit cited the Commission’s cross-connect rule as the quintessential example of the overbreadth of the Commission’s collocation rules and interpretation of the “necessary” requirement in section 251(c)(6). *GTE*, 205 F.3d at 423. The “obvious problem” with the cross-connect rule, the court said, was that it “imposes an obligation on LECs that has no apparent basis in the statute.” *Id.* Section 251(c)(6) “is focused *solely* on connecting new competitors to LEC’s networks” and requires LECs to provide collocation “as ‘necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier,’ *and nothing more.*” *Id.* (emphases added). Cross-connections between collocating carriers, however, are in no sense necessary for, and indeed have absolutely nothing to do with, connecting collocating carriers to the incumbent LEC’s network. In fact, the Commission itself has never even attempted to show that cross-connections are necessary for interconnection or access to UNEs. Nor could it, because a collocating carrier always can connect directly to the incumbent LEC’s network without going through another collocating carrier’s network. Consequently, as the court made

clear, the Commission cannot ignore the clear limits in section 251(c)(6) and require incumbent LECs either to provide cross-connects between collocating carriers or to permit collocating carriers to interconnect their equipment with other collocating carriers.

Nor would purported differences in the cost and quality among different types of CLEC interconnection (*i.e.*, direct cross-connection at the ILEC premises, indirect connection at such premises, and direct or indirect connection outside such premises), assuming such differences exist, alter the analysis. The Commission previously sought to justify its cross-connection requirements on precisely these grounds.²³ The D.C. Circuit, however, flatly rejected the Commission's "cavalier" suggestion that considerations of efficiency could justify disregarding the plain language of section 251(c)(6).²⁴ Indeed, the court admonished that, as the Supreme Court made clear in *Iowa Utilities Board*, "the FCC cannot reasonably blind itself to statutory terms in the name of efficiency. *Chevron* deference does not bow to such unbridled agency action." *Id.* at 423-24. The Commission therefore cannot disregard the plain language of section 251(c)(6) and the D.C. Circuit's mandate, and require an incumbent LEC to permit CLEC-to-CLEC cross-connections at the ILEC's premises based on the relative costs of different types of CLEC interconnection, even if such differences exist.

In any event, CLECs have available a variety of economically feasible alternatives for interconnecting with other CLECs that do not require an unlawful taking of an ILEC's property. For example, CLECs can interconnect directly through their own facilities, or through facilities leased from a host of third parties. Alternatively, CLECs can lease facilities from an incumbent

²³ FCC Br. at 29, 41-42; *see also Local Competition Order*, 11 FCC Rcd at 15801-02, ¶ 594.

²⁴ *GTE*, 205 F.3d at 423 ("[T]he Commission is almost cavalier in suggesting that cross-

LEC out of the incumbent's Access Service Tariffs. Telecommunications carriers – including BOCs, interexchange carriers, independent ILECs, as well as CLECs – have been utilizing each of these methods for decades. As such, there is no basis for concluding that CLEC-to-CLEC cross-connection at an ILEC's premises is somehow “necessary” for requesting carriers to interconnect with each other, even if the Commission could require such cross-connection under section 251(c)(6), which it cannot.

The Commission cannot rely on any other statutory provision, such as section 201(a), 251(a)(1), 251(c)(2), or 251(c)(3), to require incumbent LECs to provide or permit cross-connections between collocated carriers. In *Bell Atlantic Telephone Companies v. FCC*, the D.C. Circuit held that a statute must be narrowly construed so as to avoid raising constitutional questions, such as by implicating the Takings Clause of the Fifth Amendment, 24 F.3d at 1445-46, and thus that a provision must provide express authority to an administrative agency before it may order a taking through physical occupation of property, *id.* at 1446.²⁵ And, because it concluded that neither section 201(a) nor any other provision of the Communications Act (prior to enactment of section 251(c)(6)) provided such authority to the Commission, the court vacated the Commission's prior physical collocation regime. *Id.*

Sections 251(a)(1), 251(c)(2), and 251(c)(3) fail for the same reasons. None of these provisions even mentions collocation, much less provides the requisite “explicit congressional authorization” (*GTE*, 205 F.3d at 419) for a taking of incumbent LEC property through physical

connects are efficient and therefore justified under § 251(c)(6). This will not do.”).

²⁵ *Bell Atlantic*, 24 F.3d at 1446 (“The Commission's power to order ‘physical connections’ [under section 201(a) of the Communications Act], undoubtedly of broad scope, does not supply a clear warrant to grant third parties a license to exclusive occupation of a section of the LECs' central offices.”).

occupation of incumbent LEC premises. Only section 251(c)(6) provides explicit authorization for collocation, and, as the D.C. Circuit recognized, it is focused solely on connecting new competitors to incumbent LEC networks. Consequently, the Commission cannot reasonably construe sections 201(a), 251(a)(1), 251(c)(2), or section 251(c)(3) to provide authority for requiring an incumbent LEC to provide or permit CLEC-to-CLEC cross-connects on the incumbent LEC's property.

B. Meaning of “Physical Collocation” Under Section 251(c)(6)

The Commission requests “comment on what space assignment policies are necessary to achieve reasonable and nondiscriminatory physical collocation that does not result in any ‘unnecessary taking’ of incumbent LEC property.” *NPRM* ¶ 96. Specifically, the Commission asks whether the incumbent or the requesting carrier should request space from among unused space. *Id.*

Once again, the D.C. Circuit's opinion provides the definitive answer. The D.C. Circuit held that “nothing in § 251(c)(6) . . . endorses” the approach that allows “competitors, over the objection of LEC property owners, . . . to pick and choose preferred space on the LECs' premises.” *GTE*, 205 F.3d at 426. There is, therefore, no room on remand for the Commission to conclude otherwise.

Similarly, although the Commission seeks comment on whether an incumbent may place collocators in a room or isolated space separate from the incumbent's own equipment, *NPRM* ¶ 97, this question has already been resolved by the D.C. Circuit. The court flatly rejected the Commission's attempt to restrict the incumbent's ability to manage its property. *See GTE*, 205 F.3d at 426. Indeed, even the Commission's counsel stated that incumbents should be allowed to segregate collocation space. *Id.*

It is no answer on remand to rely on cost, delay, or efficiency rationales, *NPRM* ¶ 97, as the D.C. Circuit has already rejected such justifications as the basis for restricting the incumbent's right to allocate space. The court held that, "as noted by the Court in *Iowa Utilities Board*, 'delay and higher costs for new entrants . . . [that may] impede entry by competing local providers and delay competition' cannot be used by the FCC to overcome statutory terms in the Telecommunications Act of 1996." *GTE*, 205 F.3d at 426 (quoting *Iowa Utils. Bd.*, 525 U.S. at 389-90). Indeed, the court made it quite clear that the Commission's role on remand was quite limited: "On remand, the FCC will have an opportunity to refine its regulatory requirements to tie the rules to the statutory standard, *which only mandates physical collocation as 'necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier.'*" *Id.* (quoting 47 U.S.C. § 251(c)(6)) (emphasis added). The court did not give the Commission the right on remand to reimpose its prior regime under a different rationale, because the language of the 1996 Act simply will not allow it.

To be sure, an incumbent cannot impose restrictions in a discriminatory fashion, nor can it do so in a way that prevents a CLEC from collocating equipment that is "necessary for interconnection or access to unbundled network elements." 47 U.S.C. § 251(c)(6). But nothing in the 1996 Act authorizes the Commission to prohibit the incumbent from allocating the use of space on its own property. The Commission cannot adopt rules that "favor the LECs' competitors in ways that exceed what is 'necessary' to achieve reasonable 'physical collocation' and in ways that may result in unnecessary takings of LEC property." *Id.*

Not only does the language of the 1996 Act and the D.C. Circuit's opinion command that the ILEC choose how space is assigned; that is the only space assignment policy that makes sense. The ILEC owns the property, and it is the only party with the knowledge of all CLEC

collocation plans as well as all other tenant requirements. The ILEC is in the position to know the entire infrastructure of the central office, including cabling, racking, power capacity and placement, entrance facility capacity, future expansion plans, cooling and ventilation capacity, and future growth forecasts. A CLEC, in contrast, only has knowledge concerning the needs of the particular piece of property it wishes to collocate. And a CLEC has no incentive to balance the needs of any other users when it selects space. Its incentive is the opposite: to favor its own equipment. The ILEC, in contrast, must treat all collocators in the same just, reasonable, and nondiscriminatory manner that it treats itself and its own affiliates. Thus, as the Commission has already acknowledged, as the property owner, the ILEC is in the best position to plan effectively its own central offices and premises.²⁶

The Commission also asks whether an incumbent may require a collocator to construct or pay for a wall, structure, or buffer separating the ILEC's equipment from collocator equipment. *See NPRM* ¶ 97. In the *Advanced Services Collocation Order*, the Commission concluded that an ILEC "may take reasonable steps to protect its own equipment, such as enclosing the equipment in its own cage." 14 FCC Rcd at 4785, ¶ 42. An ILEC is also permitted to take "reasonable security measures," including security cameras and other monitoring equipment. *Id.* at 4788, ¶ 48. The Commission further held that it "expect[s] that state commissions will permit incumbent LECs to recover the cost of implementing these security measures from collocating carriers." *Id.*

²⁶ Second Report and Order, *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, 12 FCC Rcd 18730, 18863, ¶ 324 (1997).

Thus, when an ILEC must construct a structure to protect its equipment from harm by a collocating CLEC, the cost for these structures must be borne by the CLEC, as it is only because of collocation that this additional security measure is necessary. Just as CLECs have the right to secure the equipment they collocate in an enclosure for security reasons, so too do ILECs. Moreover, the Eighth Circuit recently reaffirmed its prior holding that CLECs are entitled access “only to an incumbent LEC’s *existing* network – not to a yet unbuilt superior one.” *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997), *aff’d in part, rev’d in part sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); *see Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 759 (8th Cir. 2000) (“[T]he Act does not require the incumbent LECs to do *all* the work.”) (internal quotation marks omitted), *petition for cert. pending*, No. 00-511 (U.S. filed Oct. 4, 2000). Under the Eighth Circuit’s decision, if the incumbent’s network must be altered solely for the CLEC’s benefit, *a fortiori* it is the CLEC, not the ILEC, that must pay. Moreover, the SBC ILECs have indicated that, where they install partitions, they will charge only the lesser of the cost of the partitions or other viable alternative security measures, such as security cameras. *See* Letter from James K. Smith, SBC, to William Kehoe, FCC, at 2-3 (Mar. 2, 2000). Thus, the SBC ILECs only require the CLEC to pay for the least costly option (as between cameras and an ILEC partition) to address the network security risks posed by its collocation.

The Commission further asks whether section 251(c)(6) permits an incumbent LEC to require requesting carriers to construct or pay for new entrances to the incumbent’s premises for the collocator’s use. *NPRM* ¶ 98. The answer is yes, if the CLEC wants to collocate in premises where the ILEC finds that a new entrance is the reasonable approach for allowing the CLEC entry. If, for instance, any other alternative would create security risks in the premises that would cost more to protect against than would requiring a new entrance, requiring a new

entrance would be the most reasonable alternative. Because the cost of the new entrance would be caused solely by the CLEC wishing to collocate, the CLEC must be required to pay for the entrance.

The Commission also asks whether the construction of a separate entrance is technically feasible in RTs. *NPRM* ¶ 98. Such an entrance is not feasible. A controlled environmental vault (“CEV”) is a small concrete structure that is placed underground. The structure is engineered with access through a single lift-top door at ground level. It is simply not technically feasible to bore a hole through the ceiling of a solid piece of concrete without the possibility of damaging the integrity of the structure and endangering the equipment inside. Moreover, a separate entrance will merely permit a competitor to access the same space as the main entrance, because partitioning is not feasible in an RT. Similar problems exist with aboveground cabinets. These structures are similarly small in size, with side doors. There is no place to create a separate entrance, and a CLEC would access the same space in any event.

C. Minimum Space Requirements

The Commission requests comment on whether it has statutory authority to require ILECs to permit the physical collocation of CLEC equipment within spaces too small to accommodate a rack or bay of equipment or to permit smaller increments such as a quarter rack. *NPRM* ¶ 100. The answer is no. Section 251(c)(6) must be interpreted in light of the regulatory backdrop against which it was enacted. Congress created the physical collocation requirement in the context of what the Commission had required for years under Expanded Interconnection, which entailed lease-like arrangements *for floor space*.²⁷ Requiring sub-rack/bay collocation

²⁷ An ILEC “leases” to requesting carriers floor space in central offices, not racks or bays. When a CLEC collocates equipment in a rack, the ownership of that rack belongs to the
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SBC Communications, Inc
October 12, 2000

would have no relationship to floor space. Rather, it would involve the placement of CLEC equipment *within* the ILEC's equipment. Thus, it would entail an intrusion on ILEC property rights beyond what Congress could have contemplated when it passed section 251(c)(6).

Indeed, allowing sub-rack/bay collocation would render meaningless the 1996 Act's distinction – which also tracks the Commission's pre-1996 collocation regime – between physical and virtual collocation. Congress provided that, when physical collocation is “not practical for technical reasons or because of space limitations,” the ILEC may provide virtual collocation. 47 U.S.C. § 251(c)(6). By space limitations, Congress plainly intended to reflect the Commission's prior understanding of space limitations, which was the exhaustion of usable floor space. In that circumstance, Congress provides for virtual collocation, where the CLEC does not lease floor space and the incumbent controls the installation, maintenance, and repair of the equipment dedicated to the competitor's use. If a CLEC were permitted to collocate on a sub-rack/bay basis, the CLEC would likewise not lease floor space and would be essentially paying for the placement of designated equipment. The distinction between physical and virtual collocation would therefore be rendered meaningless. Thus, allowing sub-rack/bay collocation would “run[] afoul of the cardinal canon of statutory construction” that “Congress cannot be presumed to do a futile thing.” *Halverson v. Slater*, 129 F.3d 180, 185 (D.C. Cir. 1997).

In addition to being an intrusion on ILEC property rights beyond what Congress authorized in section 251(c)(6), a sub-rack/bay collocation requirement would be unwise because of the safety, security, and network reliability problems it would pose for CLECs and ILECs alike. The Commission has recognized that ILECs' “protection of their equipment is crucial to

requesting carrier, even if the ILEC installs the bay at the request of that carrier.

[their] own ability to offer service to their customers.” *Advanced Services Collocation Order*, 14 FCC Rcd at 4788, ¶ 48. Relatedly, the Commission’s counsel indicated before the D.C. Circuit that “LECs should be allowed to segregate collocation space from the rest of a LEC’s property.” *GTE*, 205 F.3d at 426. Requiring the intertwining of other carriers’ equipment with an SBC ILEC’s equipment on the same relay rack would make this virtually impossible.

Allowing sub-rack/bay collocation within the ILEC’s lineups would preclude the ILEC from effectively securing its, or any CLEC’s, collocated equipment. The Commission’s suggestion of constructing lockable cabinets or other means for isolating equipment on the same rack is technically infeasible. *See NPRM* ¶ 102. Existing frames cannot be retrofitted with cabinets within the ILEC’s lineups. In addition, bays with cabinets will require more floor space, which in turn will limit the number of collocators that can be accommodated. Thus, adopting smaller increments would not create additional space but would instead *decrease* the amount of available space on ILEC premises because of the safety measures that would need to be adopted to make such a proposal workable. Moreover, under the Eighth’s Circuit’s holding in *Iowa Utilities Board*, ILECs cannot be required to alter their existing network to suit CLECs’ purposes. . . . The Commission cannot, consistent with the 1996 Act and the Eighth Circuit’s decision, require ILECs to construct new cabinets or otherwise modify their existing networks.

Thus, with such a sub-rack/bay collocation requirement, safety problems predictably will increase simply because different parties will be installing, maintaining, and repairing equipment in the same tight proximity (*i.e.*, on the same frame). Multiple parties may want or need to perform work on the same rack/bay at the same time. Two or more people cannot safely work on the same rack simultaneously without the possibility of disturbing the other’s equipment or

network. Moreover, technicians and installers for one party may not be aware of the safety requirements that pertain to another collocater's equipment (*e.g.*, grounding).

Mandating collocation in increments less than a bay or rack would also raise network security concerns. With multiple carriers located on the same rack, there is a heightened risk of accidental, or intentional, disruption of service. Thus, network reliability would be jeopardized by the Commission's proposal. For example, the location of multiple carriers on a single bay likely would lead to problems with improper heat dissipation. Heat dissipation is the ability to disperse the heat generated by a piece of equipment within a limited area. Different types of equipment release varying amounts of heat. Without proper heat dissipation, equipment will overheat and shut down as a form of protection, disrupting the service provided by the carrier. In a multiple-carrier, sub-rack/bay collocation arrangement, the ILEC will be unable to control the heat dissipation within each rack or bay. Nor will an individual CLEC be able to control the heat dissipation by another CLEC's equipment located on the same rack or bay. Thus, in a multiple-carrier, single-bay environment, CLECs and ILECs will not be able to protect properly their equipment. In contrast, in the current physical collocation environment of a single rack or bay of equipment, either the CLEC or the ILEC can control the heat generated by its own equipment on its assigned rack or bay.

Multiple carriers collocating on the same rack or bay will also face operational problems with cable management that could adversely effect network reliability. Most transport equipment is connected via fiber optic cables between terminals. The end termination on equipment is the most vulnerable point in a collocation arrangement. Typically, the optical connection has been designed so that the optical connection is on the face of the equipment, thereby exposing the connector. Even though there is a protective covering on the fiber optic

connector, a sharp bend in the cable is capable of disrupting service. If the connector has an internal break, it may take a significant amount of time for trouble isolation procedures to locate the source of the problem, which would increase the duration of the outage. Moreover, in non-fiber optic terminals, the slightest of accidental bumps – as could happen when a CLEC begins to terminate its cabling – could loosen, separate, or damage the terminating posts or the delicate wires connected to those posts. The result of a disconnected cable or broken terminal post would be to disrupt the service provided on those terminations.

Although some CLECs have argued that a sub-rack/bay collocation requirement would reduce costs, the costs for physical collocation would, in fact, *increase* under such a regime. The security risks posed by this requirement would require the incumbent to adopt more intricate and costly security measures to protect its equipment. For instance, it would no longer be sufficient to place the ILEC's lineup in a cage because that would not protect the ILEC's equipment from CLECs that are collocated within the same rack or bay. Site preparation costs for collocation would also increase because incumbents would no longer be able to take advantage of economies of scale associated with preparing a larger block of space. Instead, because space within a frame or bay is available in a more sporadic fashion, the ILEC would have to prepare these spaces individually. In addition, the costs for overhead racking would also increase because an ILEC typically puts similar equipment together within its bays and racks, thus reducing the types of racking required in a particular area. Allowing sub-rack/bay collocation could force the ILEC to provision all types of racking to a bay or rack to serve the various types of equipment placed in the rack or bay by the CLEC. Indeed, this requirement would prevent the central office space from being used in the most efficient manner, which will negatively affect ILECs and CLECs alike.

Not only would a sub-rack/bay requirement be unlawful, unworkable, and unwise; it is also unnecessary. CLECs today have ample opportunities to collocate. The SBC ILECs alone have more than 13,000 physical collocation arrangements in their 13-state service area. If a CLEC is interested in a reduced requirement for space, it has the option of subleasing from an existing CLEC within SBC's central office or collocating and then sub-leasing its extra space to another CLEC. Every CLEC also has the option of electing to use virtual collocation. In a virtual collocation arrangement, the CLEC need not specify more than a single piece of equipment to be placed on its behalf.

The fact that some ILECs, including certain SBC ILECs, have *voluntarily* allowed collocation on a sub-rack/bay basis *within RTs under certain circumstances* is not support for mandating this type of arrangement in a central office. RTs are unique structures that have configurations and characteristics different than central offices. First, the size of and access to an RT precludes any active security measures such as partitioning areas to separate ILEC equipment from CLEC equipment. Because the structures are so small, once a CLEC is past the security measures for accessing the structure, it then has access to the entire structure. This is, therefore, in contrast to the central office where the partitioning of equipment is possible. In light of this fact, SBC will allow CLECs to collocate with each other on a single rack/bay basis within an RT, if the CLECs wish to do so. SBC does not, however, allow CLECs to collocate with the ILEC on a sub-rack/bay basis. The spare space on an ILEC's rack/bay within an RT is usually reserved for future growth, which is usually limited to a single piece of equipment because of the space restrictions.

Second, while the risks identified above also exist with respect to RTs, the potential damage that could result is more limited than that which could be sustained in a central office.

RTs are simply distribution points beyond a central office to specific businesses or residences. An outage at an RT, though still damaging and serious, would have less of an impact simply because the number of customers affected would be smaller. For instance, a particular RT may serve 1,800 lines, whereas the SBC ILECs have central offices that serve 150,000 lines.

Moreover, the fact that some ILECs have permitted collocation on a sub-rack/bay basis in RTs under limited circumstances does not suggest that the Commission should mandate broad sub-rack/bay collocation in RTs even if it refuses to do so in the central office. *See NPRM* ¶ 107. As noted, the same risks are present in RT sub-rack/bay collocation as exist in central office sub-rack/bay collocation; it is only the extent of the potential damage that varies. Some ILECs have made a calculated business decision to permit this type of collocation in limited circumstances, because they have concluded that the risks are outweighed by competitive benefits. The Commission, in contrast, must conclude that it has the authority to order such collocation – which, as noted, it does not – and that requiring it would be generally in the public interest. Given the enormous threats to network security and reliability that a general collocation requirement would impose, it would simply not be in the public interest to mandate such a requirement, even if the Commission did have the authority to do so.

D. Collocation at Remote Incumbent LEC Premises

The Commission asks commenters to address whether it should modify its collocation rules regarding RTs to facilitate subloop unbundling. *NPRM* ¶ 104. Under the Commission's current regime, carriers have all the access they need to obtain subloops. CLECs have a right to access the subloop at multiple locations in the distribution plant, including the Serving Area Interface ("SAI"), the network interface device ("NID"), and the RT.

Moreover, SBC has voluntarily agreed to further commitments that allow CLECs even greater access to RTs. Specifically, the SBC ILECs have agreed to build new NGDLC controlled environmental vaults ("CEVs") and huts that are larger than they need. They have developed a Broadband Service, which is offered on a nondiscriminatory basis and provides CLECs DSL functionality that allows them to reach subscribers that previously could not be served by a central office-based DSLAM. This reduces the CLEC's need to place equipment in the RT, or at other locations such as the SAI. In addition, the SBC ILECs have committed to develop a Special Construction Arrangement process, which includes constructing adjacent structures for CLEC equipment. *See Modification Order App. A.* Under the latter commitment, the CLEC specifies the quantity of terminations desired at each SAI, and whether it intends to engage in line sharing with the ILEC or whether it wants a stand-alone loop. The CLEC is responsible for reimbursing the SBC ILECs for any costs associated with building the adjacent structure.

The *NPRM* seeks comment on whether ILECs intend to retrofit existing RTs. *NPRM* ¶ 105. The SBC ILECs intend to retrofit some of their existing cabinets. These decisions will be made based on the size of the structure, the existing equipment, and power requirements and heat dissipation. The amount of space that remains for CLECs will depend on these conditions; thus, it must be determined on a case-by-case basis as part of the Special Construction Arrangement process.

Additional collocation requirements in RTs could threaten the safety and reliability of the network, as discussed above. Moreover, there is no need to create such a threat because CLECs have all the access to subloops they need under the current regime. And, if space is exhausted in an RT, CLECs can collocate virtually.

Furthermore, the Commission should not impose a requirement on ILECs to provide demographic information regarding RTs similar to the information available for central offices. *Id.* ¶ 107. Although it is unclear precisely what type of information the Commission is considering, SBC opposes a requirement that would require it to assemble information and create a database solely for the CLEC's benefit. The SBC ILECs do not provide demographic information to CLECs on any of their central offices. The SBC ILECs do, however, provide CLECs with the CO address and Common Language Identifier code ("CLLI"), which is also available from Bellcore in the Local Exchange Routing Guide for a fee. SBC also provides on its website the boundaries of the Cos. Similarly, with respect to RTs, if a CLEC calls an SBC ILEC with a specific customer address it wishes to serve and asks what location serves that customer, the SBC ILEC will provide the address or location of the serving premises and its identifying code.

Any additional demographic information regarding RTs, such as the serving boundaries, would amount to market research for the CLEC's benefit that the 1996 Act does not require the incumbent to provide. RT configurations vary from site to site and region to region. The SBC ILECs do not have an existing database that is capable of producing this information. The data would therefore have to be accumulated by visiting each site and assessing its specific capabilities. In light of the large number of existing RTs in the SBC ILEC service area and the high percentage of those RTs that are cabinets, this would be an enormous undertaking. Moreover, keeping the database up-to-date would be difficult for the same reasons. Neither the 1996 Act nor the Commission requires ILECs to assemble databases solely for the use of competitors.

The Commission has also requested comment on whether it “should require that an incumbent LEC allow adjacent collocation of equipment that cannot be collocated within a remote terminal without interfering with the operation of equipment already placed within that terminal.” *Id.* ¶ 110. If collocation in the adjacent structure would also result in interference with the operation of equipment already in place, it would be just as inappropriate to allow collocation there as it would be to allow it in the RT. SBC does not oppose adjacent collocation at remote premises of structures, however, to the extent that such interference would not take place, to the extent that space and DC power is already available, and to the extent that requested space has not otherwise been legitimately reserved.

SBC does not believe that any further steps beyond those already taken by the Commission are necessary to ensure that adjacent collocation becomes an acceptable substitute for physical collocation. The *Advanced Services Collocation Order* already specifies that adjacent collocation is to be allowed “when space is legitimately exhausted in a particular LEC premises.” 14 FCC Rcd at 4786, ¶ 44. The adjacent structures themselves are typically ordered with pre-installed equipment shelves, thus allowing for growth. Moreover, under the existing regime, requesting carriers also have the right to construct their own adjacent facilities. *Id.*

The Commission asks commenters to discuss how various property laws will affect ILECs’ ability to install remote structures and whether ILEC easements permit adjacent collocation of RTs. *NPRM* ¶ 111. Property laws vary among states. In general, however, the property laws in each state protect the rights of owners to control the use of their property. Although some states have statutes that allow the use of the public rights-of-way by long distance and/or local telephone companies, those statutes still allow for the management of the rights-of-way by the governmental entity. Typically, the state, town, or city will grant the right

to occupy the rights-of-way only after a license is granted or an agreement is signed in which the applicant agrees to comply with the applicable safety and other requirements, including payment of a fee to compensate the state governmental entity for its management of the rights-of-way. Regardless of how the fee is calculated, the cities and towns generally expect that each entity that places facilities in its rights-of-way will enter into a rights-of-way agreement or apply for a license and pay that fee. Likewise, private property owners, whether they are electric power companies or individual citizens granting easements, generally do not let third parties use their property without a specific agreement and reasonable compensation. Of course, whether ILECs' easements permit adjacent collocation of RTs depends upon the specific terms of the pertinent private easement or the public right-of-way. In general, however, such arrangements are very restrictive, and telecommunications providers are allowed to locate only their own equipment, facilities, and structures. In such cases, the CLEC must obtain authorization from the owner to place adjacent collocation facilities in the easement. Thus, to the extent that CLECs need to construct adjacent facilities, they should be required to make their own arrangements with the property owners – including execution of any necessary agreement to comply with the applicable safety and other requirements and to pay whatever fee is required to secure use of the property – just as would be required of the ILEC.

As the Commission previously concluded in the *UNE Remand Order*, a competitive LEC should be responsible for resolving any obstacles that it encounters from municipalities or electric utilities. *UNE Remand Order*, 15 FCC Rcd at 3792, ¶ 213 (“potential obstacles that the requesting carrier may encounter from cities, counties, electric power companies, and similar third parties when it seeks to interconnect its equipment at subloop access points . . . are for the competitive LEC to resolve with the municipality or utility.”). Indeed, there is no rational basis

for treating such problems relating to collocation specifically any differently from the Commission's treatment of such problems relating to subloop access generally. Any attempt to order property owners to allow use of their property by third parties without just compensation raises constitutional issues. Further, any attempt to force towns and cities to accept the presence of CLEC facilities in their rights-of-way without the CLECs being subject to the same licensing or rights-of-way agreement provisions relating to safety and other public policy requirements will meet with very serious opposition from these governmental units. Even if a CLEC has only one small piece of equipment in an RT, the CLEC will likely have occasion to do work at that location, and most towns and cities include in their licenses or agreements specific requirements for placement of safety cones, hours for access, requirements for permits outside specified hours, etc. Imposition of those rules on the CLEC and enforcement of those rules should be strictly between the city and the CLEC, without the ILEC being unnecessarily caught in the middle.

E. Line Sharing

Under the Commission's current collocation regime, carriers have all the access they need to obtain access to the high-frequency portion of the loop. *See NPRM* ¶ 113. In the central office, CLECs can collocate a line splitter to obtain access to the high-frequency portion of the loop. In addition, SBC's ILECs voluntarily provide splitters for CLECs under certain terms and conditions. In RTs, CLECs are also able to collocate line splitters to obtain access to the high-frequency portion of the loop. If space in the RT is unavailable for a CLEC's line splitter, the CLEC can obtain an easement to place its cabinet next to the ILEC's cabinet. That is, the CLEC can obtain a subloop access arrangement via the special construction arrangement process.

F. Provisioning Intervals

The Commission seeks comment on whether it should “specify an overall maximum collocation provisioning interval shorter than 90 calendar days or shorter intervals for particular types of collocation arrangements.” *Id.* ¶ 114. As the Florida PSC points out, this type of question is better left to the judgment of state commissions, which are familiar with the ILECs’ particular networks and the varying facts at issue.²⁸

In any case, SBC’s ILECs are simply not capable of consistently providing collocation in a 90-day period on a broad scale without extraordinary measures and costs,²⁹ much less a shorter time period. The provisioning of collocation is a labor-intensive process requiring proper planning and engineering, not only by the ILEC but also by the requesting carrier and often third parties.

1. Unconditioned Space

Preparing unconditioned space – *i.e.*, space that lacks the infrastructure necessary to support collocated equipment – requires floor space preparation, floor loading, coring (core drilling if holes are necessary to gain access between floors), asbestos abatement, HVAC preparation, and DC power.³⁰ Much of this preparation is out of the ILEC’s control. For example, as an initial step to conditioning this space, the ILEC must order the requisite equipment (*e.g.*, new power plant, HVAC system) from manufacturers. The time it takes for

²⁸ See Comments of the Florida Public Service Commission in Response to Second Further Notice of Proposed Rulemaking at 3, CC Docket Nos. 98-147 & 96-98 (FCC filed Oct. 3, 2000) (“Florida PSC Comments”).

²⁹ See SBC Petition for Reconsideration, CC Docket Nos. 98-147 & 96-98 (FCC filed Oct. 11, 2000) (“SBC Collocation PFR”).

³⁰ SBC Collocation PFR, Attach. A (listing all the steps required to provision unconditioned space).

delivery – not to mention installation and testing – of this type of equipment exceeds the 90-day interval set by the Commission, let alone a shorter period. For example, in April 1999, SBC ordered a power plant from a vendor. The equipment was not available for installation until July of that year, and the installation itself was not completed until the end of October. *See* Letter from Jared Craighead, SBC, to Magalie Roman Salas, FCC (Aug. 28, 2000). Unfortunately, this is not an anomaly. The preparation of unconditioned space in most instances requires a minimum of six months.

Much of the work that is required for unconditioned space is also required for non-standard requests for collocation. A non-standard request is any arrangement by a CLEC for equipment, power, or space that is not normally offered by SBC to all customers on a standard basis (*i.e.*, as defined and offered in tariffs or in generic non-arbitrated interconnection agreements). As described in the SBC Collocation PFR, these requests often require SBC to augment its existing plant or add additional plant. Specifically, this may involve adding batteries and/or a generator, and/or rectifiers, and expanding power room plant space (with special conditioning requirements, such as extra reinforcement of the floor). As with unconditioned space, a minimum of 180 days is required to meet these requests.

2. Conditioned Space

Preparing conditioned space also takes time, as it requires planning and engineering involving overhead racking, DC power and backup supply, cabling (including cable facility assignment (“CFA”) cables (*i.e.*, voice-grade, DS-1, DS-3) and power cables), termination blocks, fuses, fuse boards, ground bars, and grounding cables. ILECs typically design their equipment lineups to cluster like equipment together, thus minimizing the types of necessary cable racking required for any particular area. CLEC collocation arrangements, however, are

mixed with many forms of transmission terminal equipment within in a small area, which necessitates all types of cable racking.

Moreover, it may involve even more work to provision space within an ILEC's lineup than in a separate collocation area. Placement within the ILEC's lineup would require extraordinary engineering to provision new racking to an existing area simply for use by a CLEC, because the congestion in the overhead space in a central office is extensive. Creating a new pathway for additional, "after-the-fact" racking will take more planning, design, engineering, and provisioning time than providing all types of racking to a new area designated just for collocation. In addition, vacant space in an incumbent's lineup may have at one time contained a storage cabinet or some other piece of equipment that did not require the floor to be prepared, such as for asbestos abatement. Thus, any such preparation would be required prior to placing a CLEC's frame within the space. In addition, space within an ILEC's lineup is typically available in sporadic fashion (single- and double-bay/rack increments). Because CLECs do not submit requests for only one bay/rack of equipment, the incumbent will have to engage in site preparation work in various lineups. The ILEC will not be able to achieve any economies of scale, as each area will need to be designed, prepared, engineered, and provisioned to accommodate each CLEC's request. The ILEC would also need to calculate how to handle the heat generated by CLEC equipment within its lineup,³¹ and how to provide the excessive amounts of power that CLECs often require for their equipment.³² In addition, CLECs may seek

³¹ ILECs adhere to standards for heat generation and dissipation for a per-square-foot basis. CLECs collocating today are placing equipment that far exceeds the ILEC standards.

³² ILECs typically run their power cabling to a BDFB near the equipment area. Some CLECs, however, have requested power totaling 800 amps for a single arrangement. Such massive amperage requires special cabling and engineering. Providing such power cabling to a

to collocate equipment of various sizes, which requires extra engineering to verify the technical feasibility of placing such equipment in the lineup. (In the caged collocation context, the CLEC is responsible for the engineering of its own space.) Additional security measures would also have to be taken because of the placement of CLEC equipment in such close proximity to the ILEC's equipment.

Thus, the time it takes to prepare collocation space is virtually equivalent for cageless and caged collocation, if in the same area. That is, all of the same real estate, equipment planning, and power engineering functions that are required for caged collocation are also necessary for cageless collocation. The only difference is the time that it takes to place the cage around the CLEC's equipment, which is a relatively small amount of the overall preparation time. Moreover, if cageless is inappropriately ordered within the ILECs lineup, it may take additional time to prepare the cageless space because of the additional elements and work described above.

In both the caged and cageless contexts, a provisioning interval of less than 90 days for conditioned space and 180 days for unconditioned space is simply not a feasible standard. This is especially so given that an ILEC is likely to be processing multiple collocation requests at once. The number of collocation arrangements in the SBC ILECs' 13-state service area has *doubled* since February of this year. The SBC ILECs now have more than 13,000 collocation arrangements with CLECs. This torrid pace shows no signs of slowing. Sprint has testified in

collocation area, though difficult, is more manageable than providing that type of cabling to an existing lineup. Power cables that carry 100 amps of power or more are large (three times larger than cables carrying 50 amps of power), heavy, and very inflexible. In engineering to a new collocation area, the ILEC can consider these factors when designing and placing the necessary racking. However, in an existing lineup, the racking is already in place and did not contemplate such factors. Engineers are forced to try and fit "a square peg into a round hole" by using the existing racking to accommodate these giant cables.